

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DOW JONES & COMPANY, INC.,

Plaintiff,

- against -

REAL-TIME ANALYSIS & NEWS, LTD. (d/b/a
"Ransquawk"),

Defendant.

14 Civ. 00131 (JMF)

**DECLARATION OF JASON
MALATESTA IN SUPPORT OF
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT**

JASON MALATESTA, under penalty of perjury pursuant to 28 U.S.C. § 1746, declares:

1. I am employed Dow Jones & Company, Inc. ("Dow Jones") and hold the position of Executive Director of Business Management. In this position, I run Dow Jones's newswire business and manage its profit and loss. In preparing this declaration, I relied upon business information available to me at Dow Jones. This declaration is respectfully submitted in support of Dow Jones's motion for default judgment.

Dow Jones, DJX, and DJ Dominant

2. Dow Jones is a widely known publisher of news and business information and publishes, among other things, *The Wall Street Journal*, *Barron's* and MarketWatch.com. It provides content through its newswires, websites, newspapers, newsletters, databases and magazines, as well as through radio and video. Dow Jones is able to collect and provide accurate, comprehensive, and timely news and business information to its millions of world-wide customers through the significant efforts of its journalists and its substantial investments in its worldwide journalistic infrastructure.

3. In 2013, Dow Jones created DJX, an online product that incorporates original news and analysis from all Dow Jones-owned publications and other news and

information resources. DJX provides real-time analysis and news to paid subscribers via live, streaming newsfeeds of headlines and articles generated by Dow Jones. Users can customize their newsfeeds or view newsfeeds curated by Dow Jones.

4. One such curated newsfeed, called DJ Dominant, is a critical part of DJX. It compiles in one place exclusive real-time news and analysis from Dow Jones and *The Wall Street Journal* that can impact markets and that is not available through any other publisher. DJ Dominant is a time-advantaged service, providing Dow Jones's most time-sensitive news before Dow Jones publishes that news anywhere else. It collects Dow Jones's most valuable and proprietary news and analysis – content made more valuable by being available exclusively to DJ Dominant subscribers before others see it.

5. Customers subscribe to DJX by entering into a paid subscription agreement with Dow Jones. Subscribers may access and review information on DJX for their own use, but may not "reproduce, distribute, display, sell, publish, broadcast, or circulate" DJX content to any third party or make that content available for any such use. All DJX subscribers must sign a contract containing the quoted language that restricts their ability to redistribute DJX content.

6. DJX is specifically targeted at traders, who are offered "first access to proprietary, exclusive news and scoops from The Wall Street Journal and Dow Jones." "DJX For Traders," *available at* <http://new.dowjones.com/products/djx/trader/>. On that website, Dow Jones tells potential trader subscribers that they can "[m]ove ahead of the market with time-advantaged access to exclusive news and scoops" from Dow Jones. Traders are encouraged to make "better-informed trades" by receiving "the most relevant and credible information to

quickly seize opportunities and manage risk." *Id.* This product description is annexed hereto as Exhibit A.

7. Similarly, DJX is marketed to investment bankers, investment analysts, and professionals in private equity and venture capital on the basis that it can provide the "timeliest information" for these individuals to rely upon in their work. *See* "DJX for Investment Bankers," *available at* <http://new.dowjones.com/products/djx/investment-banker/>; "DJX For Investment Analysts," *available at* <http://new.dowjones.com/products/djx/investment-analyst/>; "DJX For Private Equity / VC," *available at* <http://new.dowjones.com/products/djx/private-equity-vc/>. These product descriptions are annexed hereto as Exhibits B, C, and D, respectively.

Ransquawk's Misappropriation of Dow Jones's News

8. Without permission from Dow Jones to do so and without compensating Dow Jones, Real-Time Analysis & News, Ltd. (d/b/a "Ransquawk") systematically copies verbatim or nearly verbatim content from DJX, and specifically from the DJ Dominant feed. This content was reported, written, and edited by journalists working for Dow Jones publications including *The Wall Street Journal*, the Dow Jones Newswires, and other Dow Jones publications. Ransquawk then distributes without authorization Dow Jones's content through its website, ransquawk.com, and through a mobile application. It provides DJ Dominant headlines verbatim through its audio service seconds after they are posted – in some cases as quickly as two seconds later. After a minute or two, it posts those headlines on its newsfeed.

9. On September 24, 2013, one of our DJX customers, a trader at a high frequency trading firm based in Chicago, complained to Dow Jones about Ransquawk. The customer said, via e-mail, that Ransquawk was "blasting out your [DJ D]ominant headlines as

soon as they [appear]." According to the customer, this was "tak[ing] away all the edge" that the customer was paying Dow Jones to receive.

10. On October 3, 2013, the same customer sent a second e-mail complaining to Dow Jones. That e-mail stated that Ransquawk was still "pounding out your headlines" and "killing the edge."

11. Exhibit E is an excerpt of the ransquawk.com website that was captured on February 19, 2007 through the Internet Archive at <http://archive.org/web/>. In this version of the website, the "Services" page of ransquawk.com stated:

"Many traders rely solely on reading financial newswires (EXPENSIVE) or even watching TV news (SLOW) to keep them informed on what is happening in the world. You don't have to. We deliver this news to you – AS IT BREAKS! – by way of an internet 'squawk box' – removing the need to pay for expensive news information systems yourselves. ... The team at Ransquawk speaks to analysts, journalists, brokers and traders worldwide, whilst looking at 30+ screens of various newswires, independent feeds, and multiple global TV channels, scouring these for potential market moving information."

Ransquawk.com, "Services," Feb. 19, 2007, *available at*

<http://web.archive.org/web/20070219172453/http://ransquawk.com/content/view/3/5/>.

12. This type of product positioning by Ransquawk de-values the Dow Jones news services, and is particularly injurious to Dow Jones Newswire products and the DJX service, as DJX customers are paying for the exclusive, time-advantaged content that only Dow Jones generates.

Additional Information Regarding Dow Jones's Damages

13. Dow Jones has invested heavily in its global news force. Dow Jones's journalists stationed in the U.S. and around the world work tirelessly to provide "scoops" of the sort that are posted every day on DJ Dominant for the company's subscribers. The company's

global news department includes more than 1,800 journalists working in 45 countries, and Dow Jones incurs millions of dollars of expenses annually that are attributed to its newswire business alone. In building the DJX service, the company spent over \$1 million in software development costs to create the DJ Dominant interface and allow DJ Dominant to provide one segment of Dow Jones's audience with news on a time-advantaged basis.

14. The lowest available monthly cost of a DJX subscription is \$249.00 per month. There is no discount offered on a volume basis – every individual subscriber pays at least \$249.00 for access each month, and every corporate subscriber pays at least \$249.00 times the number of users within its organization.

15. For some products, Dow Jones partners with distributors, to which it licenses the right to sell subscriptions. This generally occurs in certain regions and markets that Dow Jones's sales force does not cover. Those companies then redistribute the products to end users. The rate Dow Jones charges such distributors is a wholesale rate, discounted from the retail price of a subscription to the end user.

16. We do not offer DJX at a wholesale rate to any distributors because of the nature of the product. It contains Dow Jones's most exclusive and therefore valuable content in the most valuable time frame, including DJ Dominant. DJ Dominant is only available from Dow Jones to subscribers. Further, we do not license any of DJ Dominant's content to third parties for use during its time-advantaged exclusive window, as this would undercut the advantage that Dow Jones provides to its subscribers. The service was designed not to be licensed to any third party distributor.

17. We also would not have agreed to any distribution arrangement with Ransquawk had it requested one, because, among other things, Ransquawk is considered a direct

competitor whose customer base is DJX's and Dow Jones Newswires's target market. To the extent Ransquawk is able to feed Dow Jones-originated news content to professionals on a time-advantaged basis, it undercuts the business model of the DJX product. As explained above, typically Dow Jones only entertains wholesale distribution arrangements in fields which Dow Jones is not equipped to sell to directly. That could not be said of the Ransquawk target audience. Further, Dow Jones has considered launching its own "squawk" service from time to time.

18. In the hypothetical situation in which Dow Jones entered into a distribution agreement with Ransquawk that would have licensed Ransquawk to redistribute and rebroadcast Dow Jones content, specifically the content from the DJ Dominant newswire, any hypothetical wholesale discount would be entirely counter-balanced by the premium we would charge a direct competitor like Ransquawk to distribute our product. Thus, we would not license DJX subscriptions to Ransquawk at a rate of less than \$249.00 per subscriber.

19. I conservatively estimate the total number of Ransquawk subscribers to be 15,000, the lowest number I have seen reported by Ransquawk. In fact, this number appears to be outdated as more recent claims by Ransquawk would place its subscribership in the 20,000-30,000 range. I have reviewed the following references:

- Exhibit F is a disc that includes a promotional video created by Ransquawk, and hosted on BusinessWire.com, where a Ransquawk employee states that "globally we have some 15,000 listeners." It's accompanied by a press release from Ransquawk, set forth as Exhibit G hereto, stating that they have a "listener base of over 16,000 professional traders and brokers worldwide." The date on this press release is

November 2011.

<http://www.businesswire.com/news/home/20111128005253/en/RANSquawk-Unveils-Website-Giving-Users-Unparalleled-Access#.Uxo8VONdXAk>

- Exhibit H is the same press release (without the video), with the same 16,000 figure, hosted on Reuters.com.

<http://www.reuters.com/article/2011/11/28/idUS71542+28-Nov-2011+BW20111128>

- The info screen on Apple's App Store for Ransquawk's iPhone app (see screenshot set forth as Exhibit I) says that they have "[m]ore than 20,000" subscribers "around the world."

- Exhibit J is a press release from Ransquawk on the PRweb.com site, dated June 2012, that say Ransquawk has "over 16,000" subscribers:

http://www.prweb.com/releases/RANSquawk/financial_mobile_app/prweb9644069.htm

- Exhibit K is a blurb on the website CMEGroup.com stating that Ransquawk, a "featured contributor," has "over 17,000 global listeners" and providing a link to Ransquawk's own website.

<http://www.cmegroup.com/education/browse-materials/bios/commentary/ransquawk.html>

- Exhibit L is a page on Ransquawk's own website stating that the site has more than 1.2 million visits per year: <http://ransquawk.com/about>.

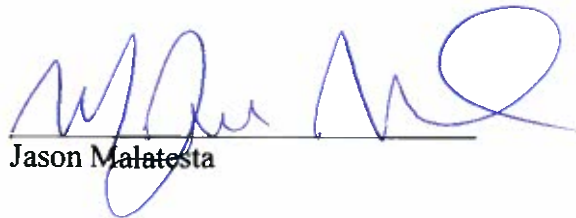
- Exhibit M is a page on Ransquawk's own website that states that it has 15,000 and 16,000 subscribers:
<http://portal.ransquawk.com/headlines/325095>.
- Exhibit N is an excerpt copied from Ransquawk's YouTube channel as of April 17, 2014, which claimed that the company "delivers breaking news, commentary, flow and rumour for equities, FX, fixed income and commodities 24 hours a day to over 30,000 traders and brokers globally." Youtube.com, "RAN squawk," *available at* <http://www.youtube.com/user/ransquawk>.
- Exhibit O is an excerpt copied from Ransquawk's LinkedIn page as of March 4, 2014, which stated that "[w]e have over 25,000 listeners globally ranging from the biggest hedge fund managers in the world to top tier investment banks, prop traders, fund managers, brokers and individual traders." LinkedIn.com, "RANsquawk," *available at* <http://www.linkedin.com/company/ransquawk>.
- Exhibit P is a copy of a portion of the Ransquawk website that was captured on December 22, 2012. The "About" page of ransquawk.com stated: "We have over 20,000 listeners globally ranging from the biggest hedge fund managers in the world to top tier investment banks, prop traders, fund managers, brokers, and individual traders." Ransquawk.com, "About," *available at* <http://web.archive.org/web/20121222075356/http://ransquawk.com/about>.

20. Based on the foregoing data, the license fee that Dow Jones would charge to Ransquawk for the privilege of redistributing DJX content would be at minimum:

(Individual retail monthly fee of \$249) x (number of Ransquawk subscribers, or 15,000) = \$3.735 million per month.

21. In reality, if Dow Jones were to consider licensing its material to Ransquawk – which it would not – Dow Jones would require a monthly fee from Ransquawk for redistribution of DJX of many times the calculated amount for the competitive and product-positioning reasons described earlier.

Dated: New York, New York
April 23, 2014



Jason Malatesta